

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 440

**Introduced by Assembly Member Gatto
(Principal coauthor: Assembly Member Mullin)**

February 15, 2013

An act to add Chapter 6.10 (commencing with Section 25403) to Division 20 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 440, as amended, Gatto. Hazardous ~~substances~~: *materials*: releases: local agency ~~cleanup or remedy~~: *cleanup*.

Existing law dissolved redevelopment agencies and community development agencies, as of February 1, 2012, and provides for the designation of successor agencies, as defined. Existing law requires successor agencies to wind down the affairs of the dissolved redevelopment agencies and to, among other things, perform obligations required pursuant to any enforceable obligation, including, but not limited to, any obligations under the Polanco Redevelopment Act to remedy or remove the release of hazardous substances within a project area consistent with state and federal laws, as specified.

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, imposes liability for hazardous substance removal or remedial actions and requires the Department of Toxic Substances Control to adopt, by regulation, criteria for the selection and for the

priority ranking of hazardous substance release sites for removal or remedial action under the act.

This bill would authorize a local agency to take any action similar to that under the Polanco Redevelopment Act that the local agency determines is necessary, consistent with other state and federal laws, ~~to remedy or remove~~ *investigate and clean up* a release of hazardous ~~substances~~ *materials in a blighted area, as determined by the local agency*, within the boundaries of the local agency, pursuant to the procedures specified in the bill.

The bill would require the Department of Toxic Substances Control and the California regional water quality control board to adopt and post cleanup guidelines for the taking of a ~~removal or remedial~~ *cleanup* action. A local agency would be required to submit for approval a cleanup plan to the regional board or a ~~removal or remedial action plan~~ to the department before taking action. The bill would require a local agency to take specified actions with regard to providing an opportunity for the public and other public agencies to participate in decisions regarding the proposed ~~removal or remedial action plan or~~ cleanup plan. The bill would allow the local agency to take those ~~removal or remedial actions~~ *cleanup activities* only under specified conditions with regard to the responsible party for the release, unless the local agency is taking action to investigate or conduct feasibility studies concerning a release or determines that conditions require immediate action.

The bill would allow the local agency to designate another agency, in lieu of the department or the regional board, to review and approve a cleanup plan or ~~removal or remedial action plan~~ and to oversee the ~~remediation or removal~~ *cleanup* of hazardous ~~substances~~ *material* from a hazardous ~~substance~~ *material* release site, under certain conditions. The bill would immunize a local agency that ~~remedies or removes~~ *cleans up* a hazardous ~~substance~~ *material* release, pursuant to those provisions, from liability under specified state laws, if the action is in accordance with a cleanup plan or ~~removal or remedial action plan~~ prepared by a qualified independent contractor, as defined, and approved by the department, a regional board, or the designated agency, and the ~~removal or remedial action~~ *cleanup* is undertaken and properly completed. The bill would authorize the recovery by a local agency of cleanup ~~and remedial~~ costs from the responsible party.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 6.10 (commencing with Section 25403) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.10. HAZARDOUS ~~SUBSTANCE~~ MATERIAL RELEASE
CLEANUP

25403. For purposes of this article, the following terms shall have the following meanings:

(a) “*Blighted area*” means an area in which the local agency determines there are vacancies, abandonment of property, or a reduction or lack of proper utilization of property, and the presence or perceived presence of a release or releases of hazardous material contributes to the vacancies, abandonment, or reduction or lack of proper utilization of property.

(b) “*Clean up*” or “*cleanup*” means an action taken to remove, as defined in Section 25323, remediate, as described in subdivision (a) or (b) of Section 25322, or otherwise abate the effects of a release of hazardous material.

(c) “*Cleanup plan*” means a document that details the actions to be taken to clean up a release of a hazardous material.

~~(a)~~
(d) “CUPA” means the Certified Unified Program Agency certified to implement the unified program pursuant to Chapter 6.11 (commencing with Section 25404).

~~(b)~~
(e) “Department” means the Department of Toxic Substances Control.

~~(c)~~
(f) “Designated agency” means an agency designated by the local agency pursuant to paragraph (1) or (2) of subdivision ~~(d)~~ (e) of Section 25403.1.

~~(d)~~
(g) “Director” means the Director of Toxic Substances Control.

~~(e)~~
(h) “Hazardous substance” means a hazardous substance as defined in subdivision (h) of Section 25281, and any reference to hazardous substance in the definitions referenced in this section shall be deemed to refer to hazardous substance, as defined in this

1 ~~subdivision~~ material” has the same meaning as defined in
2 subdivision (d) of Section 25260.

3 (i) “Investigation” means an action taken to determine the
4 source, nature, and extent of a release of hazardous material with
5 sufficient detail to provide a reasonable basis for decisions
6 regarding the cleanup of the hazardous material. An investigation
7 may take place in one or more phases and may include a Phase I
8 environmental site assessment.

9 (j) “Investigation plan” means a document that specifies actions
10 to be taken to investigate a suspected release of hazardous
11 material. An investigation plan may provide for an investigation
12 to take place in one or more phases.

13 ~~(f)~~
14 (k) “Local agency” means a county, a city, or a housing
15 authority, as provided in Section 34240.

16 ~~(g)~~
17 (l) “Person” means an individual, trust, firm, joint stock
18 company, business concern, partnership, limited liability company,
19 association, and corporation, including, but not limited to, a
20 government corporation. “Person” also includes any local agency,
21 county, district, commission, the state or any department, agency,
22 or political subdivision thereof, any interstate body, and the federal
23 government or any department or agency thereof to the extent
24 permitted by law.

25 ~~(h)~~
26 (m) “Phase I environmental assessment” has the same meaning
27 as defined in Section 25200.14, except with respect to a hazardous
28 ~~substance~~ material.

29 ~~(i)~~
30 (n) “Qualified independent contractor” means an independent
31 contractor who is any of the following:

32 (1) An engineering geologist who is certified pursuant to Section
33 7842 of the Business and Professions Code.

34 (2) A geologist who is registered pursuant to Section 7850 of
35 the Business and Professions Code.

36 (3) A civil engineer who is registered pursuant to Section 6762
37 of the Business and Professions Code.

38 ~~(j)~~
39 (o) “Regional board” means a California regional water quality
40 control board.

1 ~~(k)~~

2 ~~(p) “Release” means any spilling, leaking, pumping, pouring,~~
3 ~~emitting, emptying, discharging, injecting, escaping, leaching,~~
4 ~~dumping, or disposing into the environment.~~

5 ~~(l) (1) “Remedy” or “remove” means an action to assess,~~
6 ~~evaluate, investigate, monitor, remove, correct, clean up, or abate~~
7 ~~a release of a hazardous substance or to develop plans for those~~
8 ~~actions.~~

9 ~~(2) “Remedy” includes all of the following:~~

10 ~~(A) Those actions that are consistent with a permanent remedy,~~
11 ~~that are taken instead of, or in addition to, removal actions in the~~
12 ~~event of a release or threatened release of a hazardous substance~~
13 ~~into the environment. “Remedy” also includes those actions~~
14 ~~specified in Section 9601 of Title 42 of the United States Code,~~
15 ~~except that any reference in Section 9601 of Title 42 of the United~~
16 ~~States Code to the President, relating to determinations regarding~~
17 ~~the relocation of residents, businesses, and community facilities~~
18 ~~shall, for the purposes of this chapter, be deemed to be a reference~~
19 ~~to the Governor, and any other reference in that section to the~~
20 ~~President shall, for the purposes of this chapter, be deemed a~~
21 ~~reference to the Governor, or the director, if designated by the~~
22 ~~Governor.~~

23 ~~(B) Those actions that are necessary to monitor, assess, and~~
24 ~~evaluate a release or a threatened release of a hazardous substance.~~

25 ~~(C) Site operation and maintenance.~~

26 ~~(3) “Remove” includes the cleanup or removal of released~~
27 ~~hazardous substances from the environment or the taking of other~~
28 ~~actions as may be necessary to prevent, minimize, or mitigate~~
29 ~~damage that may otherwise result from a release or threatened~~
30 ~~release. “Remove” includes those actions specified in Section 9601~~
31 ~~of Title 42 of the United States Code.~~

32 ~~(m)~~

33 ~~(q) “Responsible party” means a person described in subdivision~~
34 ~~(a) of Section 25323.5 of this code or subdivision (a) of Section~~
35 ~~13304 of the Water Code.~~

36 ~~(n)~~

37 ~~(r) “State board” means the State Water Resources Control~~
38 ~~Board.~~

39 25403.1. (a) (1) (A) A local agency may, *in accordance with*
40 ~~this chapter~~, take any action that the local agency determines is

1 necessary and that is consistent with other state and federal laws
2 ~~to remedy or remove~~ *investigate or clean up* a release of hazardous
3 ~~substances on, under, or from property within a local agency's~~
4 ~~boundaries;~~ *boundaries and that the local agency has found to be*
5 *within a blighted area*, whether the local agency owns that property
6 ~~or not, in accordance with the requirements of this chapter.~~ *not.*
7 When taking action pursuant to this chapter, if the local agency
8 does not own property that is the subject of the ~~removal or remedial~~
9 ~~action;~~ *investigation and cleanup activities*, the local agency has
10 the right of ~~entry upon~~ *to enter* that property, if, upon providing
11 notice to the owner of that property in accordance with
12 subparagraph (A) of paragraph ~~(1)~~ (2) of subdivision (b), the owner
13 of the property does not respond to the notice or the local agency
14 *reasonably* deems the response inadequate.

15 (B) *The local agency shall contact the department or the*
16 *appropriate regional board prior to issuing a notice pursuant to*
17 *paragraph (2) of subdivision (b) in connection with a property on*
18 *the National Priority List or a property or release subject to any*
19 *of the following:*

20 (i) *Chapter 6.5 (commencing with Section 25100).*

21 (ii) *A Cease and Desist Order issued under Section 13301 of*
22 *the Water Code.*

23 (iii) *A Cleanup and Abatement Order issued under Section*
24 *13304 of the Water Code.*

25 (iv) *An existing voluntary cleanup agreement between the*
26 *regional board or the department and a responsible party that*
27 *requires a cleanup by a specified date.*

28 (C) (i) *If the department or the regional board objects within*
29 *10 days to the local agency issuing the notice, the local agency*
30 *and the department or regional board shall promptly meet and*
31 *confer to resolve the department's or regional board's concerns.*
32 *If the local agency and the department or the regional board*
33 *cannot reach a mutually acceptable resolution, the matter shall*
34 *be submitted to the site designation committee created pursuant*
35 *to Section 25261.*

36 (ii) *Notwithstanding subdivision (a) of Section 25261, the*
37 *director and the chairperson of the state board shall not participate*
38 *in the review of a dispute involving the department or a regional*
39 *board, respectively. The decision of the site designation committee*
40 *shall resolve the matter impartially, by majority vote, and within*

1 20 days of the date on which the matter is presented. Either party
2 to the dispute may present the matter to the site designation
3 committee, and each party shall be given a reasonable opportunity
4 to be heard.

5 (2) (A) The department and regional board shall adopt and post
6 on that agency's Internet Web site general cleanup guidelines with
7 regard to taking action to ~~remedy or remove~~ *clean up* a release
8 pursuant to this chapter.

9 (B) Paragraph (A) does not prohibit the department or the
10 regional board from approving site-specific cleanup guidelines,
11 with regard to taking an action to ~~remedy or remove~~ *clean up* a
12 release pursuant to this chapter, as appropriate.

13 (3) The adoption and posting of general cleanup guidelines
14 pursuant to this section shall not be deemed the adoption of a
15 regulation for purposes of Chapter 3.5 (commencing with Section
16 11340) of Part 1 of Division 3 of Title 2 of the Government Code
17 and shall be exempt from those provisions.

18 (4) A local agency shall, before taking action to ~~remedy or~~
19 ~~remove~~ *clean up* the release, do all of the following:

20 ~~(A) Have a removal or remedial action plan or cleanup plan~~
21 ~~prepared, pursuant to those guidelines, by an independent qualified~~
22 ~~contractor.~~

23 (A) *If the investigation has not been completed or additional*
24 *investigation is necessary, have an investigation plan prepared by*
25 *an independent qualified contractor.*

26 (B) *Submit an investigation plan and cost recovery agreement*
27 *to the regional board or the department for review.*

28 (C) *After completion of the investigation plan, have a cleanup*
29 *plan prepared, pursuant to the regional board or the department*
30 *guidelines, by an independent qualified contractor.*

31 ~~(B)~~

32 (D) *Submit a cleanup plan and existing applicable documents*
33 *required pursuant to the California Environmental Quality Act*
34 *(Division 13 (commencing with Section 21000) of the Public*
35 *Resources Code) to the regional board or a removal or remedial*
36 *action plan to the department for approval.*

37 ~~(E)~~

38 (E) *Comply with the public participation requirements specified*
39 *in Section 25403.7.*

1 (5) If the regional board or the department has comments on
2 the investigation plan, the regional board or the director shall
3 provide the comments to the local agency within 30 days of receipt
4 of the investigation plan.

5 ~~(5)~~

6 (6) The regional board or the department shall respond to the
7 local agency's request for approval of a cleanup plan ~~or removal~~
8 ~~or remedial action plan~~ within 60 days of the receipt of the plan.

9 ~~(6)~~

10 (7) Within 60 days after approval of the cleanup plan ~~or removal~~
11 ~~or remedial action~~ plan, pursuant to applicable statutes and
12 regulations, the ~~director~~, *director* or the regional board, as
13 appropriate, shall acknowledge, in writing, that upon proper
14 completion of the ~~removal or remedial action~~ *cleanup* in accordance
15 with the *cleanup* plan, the immunity provided by Section 25403.2
16 shall ~~apply~~. *apply*.

17 ~~(7)~~

18 (8) The local agency shall notify the department and local health
19 and building departments and the regional board of any cleanup
20 activity pursuant to this section at least 30 days before the
21 commencement of the activity.

22 ~~(8)~~

23 (9) If an action taken by a local agency or a responsible party
24 to ~~remedy or remove~~ *clean up* a release of a hazardous ~~substance~~
25 *material* does not meet, or is not consistent with, a cleanup plan
26 approved by the regional board or a ~~removal or remedial action~~
27 ~~plan approved by~~ the department, the department or the regional
28 board that approved the cleanup plan ~~or removal or remedial action~~
29 ~~plan~~ may require the responsible party or local agency to take, or
30 cause the taking of, additional action to ~~remedy or remove~~ *clean*
31 *up* the release, as provided by applicable law.

32 ~~(9)~~

33 (10) If an administering agency for the site has been designated
34 pursuant to Section 25262, the department or the regional board
35 may impose any requirements for additional action pursuant to
36 paragraph ~~(8)~~ (9) only as provided in Sections 26263 and 25265.

37 ~~(10)~~

38 (11) If methane or landfill gas is present, the local agency shall
39 obtain written approval from the Department of Resources

1 Recycling and Recovery prior to taking action authorized under
2 this subdivision.

3 (b) Except as provided in subdivision (c), a local agency may
4 take the actions specified in subdivision (a) only under one of the
5 following conditions:

6 (1) There is no responsible party for the release identified by
7 the local agency.

8 (2) Both of the following apply:

9 (A) A party determined by the local agency to be a responsible
10 party for the release has been notified by the local agency, or has
11 received adequate notice from the department, a regional board,
12 the California Environmental Protection Agency, or other
13 governmental agency with relevant authority, and has been given
14 60 days to respond and to propose ~~a removal or remedial action~~
15 ~~plan or cleanup plan and schedule.~~ *an investigation plan and*
16 *schedule if in the opinion of the responsible party's qualified*
17 *independent contractor there is not enough site-specific data to*
18 *prepare a cleanup plan, and 60 days to propose a cleanup plan*
19 *and schedule following completion of the investigation plan in*
20 *accordance with the investigation plan schedule approved by the*
21 *local agency.*

22 (B) The responsible party specified in subparagraph (A) has not
23 agreed within an additional 60 days to implement ~~a~~ *an investigation*
24 *plan and schedule to remedy or remove* ~~investigate or clean up~~
25 the release that meets both of the following requirements:

26 (i) The *investigation plan and schedule and the cleanup plan*
27 and schedule are acceptable to the local agency.

28 (ii) The local agency makes a finding that the *investigation plan*
29 *and schedule and the cleanup plan and schedule* are consistent
30 with the intended *development schedule and* use of the property.

31 (3) (A) The party determined by the local agency to be the
32 responsible party for the hazardous ~~substance~~ *material* release
33 entered into an agreement with the local agency to prepare ~~a~~
34 ~~removal or remedial action~~ *an investigation plan or cleanup plan*
35 for approval by the department, the regional board, or the
36 appropriate local agency, and to implement the ~~removal or remedial~~
37 ~~action~~ *investigation plan or cleanup plan* in accordance with an
38 agreed schedule, but failed to do any of the following:

39 (i) Prepare the ~~removal or remedial action~~ *investigation plan or*
40 *cleanup plan.*

1 (ii) Implement the ~~removal or remedial action~~ *investigation* plan
2 or cleanup plan in accordance with the agreed schedule.

3 (iii) Otherwise failed to carry out the ~~removal or remedial action~~
4 *investigation* in an appropriate and timely manner.

5 (B) An action taken by the local agency pursuant to this
6 paragraph shall be consistent with any agreement between the local
7 agency and the responsible party and with the requirements of the
8 state agency or the ~~local~~ *designated* agency that approved or will
9 approve the ~~removal or remedial action plan~~ or cleanup plan and
10 is overseeing or will oversee the preparation and implementation
11 of the ~~removal or remedial action~~ *cleanup* plan.

12 (c) *The responsible party specified in subparagraph (A) of*
13 *paragraph (2) of subdivision (b) may appeal a 60-day notice issued*
14 *pursuant to this section to the local agency's governing body by*
15 *filing a written request to appeal the notice with the clerk of the*
16 *local agency within 10 days of receipt of the notice. Filing an*
17 *appeal to the local agency's governing body tolls the 60-day notice*
18 *period until the appeal is heard and decided by the local agency's*
19 *governing body. Any challenge to the decision reached by the local*
20 *agency's governing body shall be presented only as part of a cost*
21 *recovery or injunctive proceeding initiated by the local agency*
22 *under Section 25403.5. The local agency's decision shall be upheld*
23 *if supported by substantial evidence presented in the action*
24 *commenced under Section 25403.5, and shall not be invalidated*
25 *on the grounds that the local agency failed to include all*
26 *responsible parties in a 60-day notice issued pursuant to this*
27 *section. A claim of failure to include all responsible parties in a*
28 *60-day notice issued pursuant to this section shall not be a defense*
29 *to the liability provided for in Section 25403.5.*

30 ~~(e)~~

31 (d) Subdivision (b) does not apply to either of the following:

32 (1) A local agency taking actions to investigate or conduct
33 feasibility studies concerning a release.

34 (2) A local agency taking the actions specified in subdivision
35 (a) if the local agency determines that conditions require immediate
36 action.

37 ~~(d)~~

38 (e) (1) A local agency may designate another agency, in lieu
39 of the department or the regional board, to review and approve a
40 cleanup plan ~~or a removal or remedial action plan~~ and to oversee

1 ~~the remediation or removal~~ *cleanup* of hazardous ~~substances~~
2 ~~materials~~ from a specific hazardous ~~substance~~ *material* release
3 site if the agency is designated as the administering agency under
4 Section 25262. In that event, the designated agency shall conduct
5 the oversight of the ~~removal or remedial action~~ *cleanup* in
6 accordance with Chapter 6.65 (commencing with Section 25260),
7 and all provisions of that chapter shall apply to the ~~removal or~~
8 ~~remedial action~~ *cleanup*.

9 (2) A local agency may designate another agency to review and
10 approve a cleanup plan ~~or a removal or remedial action plan~~ for a
11 site and oversee the ~~remediation and removal action~~ *cleanup* at
12 the site if all of the following conditions exist:

13 (A) The designated agency is certified as a CUPA.

14 (B) The site is an underground storage tank site subject to
15 Chapter 6.7 (commencing with Section 25280).

16 (C) The designated agency is certified pursuant to Section
17 25297.01 and the state board has entered into an agreement with
18 ~~that the designated~~ agency pursuant to Section 25297.1.

19 (D) The designated agency determines that the site is within the
20 guidelines and protocols established in, and pursuant to, the
21 agreement specified in subparagraph (C).

22 (E) The designated agency consents to the designation.

23 (3) Within 60 days after approving a cleanup plan ~~or a removal~~
24 ~~or remedial action plan~~ pursuant to paragraph (1) or (2), the
25 designated agency shall issue a notice that, upon proper completion
26 of the ~~removal or remedial action~~ *cleanup* plan, the immunity
27 specified in Section 25403.2 shall apply. If the designated agency
28 was formed by the local agency, the cleanup plan ~~or removal or~~
29 ~~remedial action plan~~ shall also be subject to the approval of the
30 department or regional board.

31 (4) (A) An agency may not consent to the designation pursuant
32 to paragraph (1) or (2) unless the designated agency determines
33 that it has adequate staff resources and the requisite technical
34 expertise and capabilities available to adequately supervise the
35 ~~removal or remedial action~~ *cleanup*.

36 (B) If an agency has been designated pursuant to paragraph (2),
37 the department or a regional board may require the designated
38 agency to withdraw from the designation or stop taking action
39 pursuant to that designation, after providing the designated agency
40 with adequate notice, if both of the following conditions are met:

1 (i) The department or a regional board determines that the
2 agency's designation was not consistent with paragraph (2), or
3 makes one of the findings specified in subdivision (d) of Section
4 101480.

5 (ii) The department or a regional board determines that it has
6 adequate staff resources and capabilities available to adequately
7 supervise the ~~removal or remedial action~~, *cleanup*, and assumes
8 that responsibility.

9 (C) This paragraph does not prevent a regional board from taking
10 an action pursuant to Division 7 (commencing with Section 13000)
11 of the Water Code.

12 (5) If an agency has been designated pursuant to paragraph (1)
13 or (2), the designated agency may, after providing the local agency
14 with adequate notice, withdraw from its designation or stop taking
15 action pursuant to that designation after making one of the findings
16 specified in subdivision (d) of Section 101480.

17 (e)

18 (f) (1) To facilitate remedial planning, the local agency may
19 require the owner or operator of a site within the local agency's
20 jurisdictional boundaries to provide the local agency with all
21 existing environmental information pertaining to the site, including
22 the results of any phase I or subsequent environmental assessment,
23 any assessment conducted pursuant to an order from, or agreement
24 with, any federal, state, or local agency, and any other
25 environmental assessment information, except that which is
26 determined to be privileged.

27 (2) A person requested to furnish the information pursuant to
28 paragraph (1) shall be required only to furnish that information
29 that may be within that person's possession or control, including
30 actual knowledge of information within the possession or control
31 of any other party. If environmental assessment information is not
32 available, the local agency may require the owner of the property
33 to conduct, and to pay the expenses of conducting, an assessment
34 in accordance with standard real estate practices for conducting
35 phase I or phase II environmental assessments. If the local agency
36 conducts the phase I or phase II environmental assessment because
37 the owner or operator failed to provide this information, the local
38 agency shall have a right of entry, upon reasonable notice, to enter
39 the property and conduct the phase I or phase II environmental
40 assessment. The local agency may recover the costs of the phase

1 I or phase II environmental assessment in accordance with Section
2 25403.5.

3 25403.2. (a) (1) Notwithstanding any other law, except as
4 otherwise provided in this chapter, a local agency that undertakes
5 and completes an action, or causes another person to undertake
6 and complete an action pursuant to Section 25403.1 for which a
7 finding of completion is made pursuant to subdivision (b), to
8 ~~remedy or remove~~ *clean up* a hazardous ~~substance~~ *material* release
9 on, under, or from property within the local agency's boundaries,
10 in accordance with a cleanup plan ~~or removal or remedial action~~
11 ~~plan~~ prepared by a qualified independent contractor and approved
12 by the department, a regional board, or the designated agency, in
13 accordance with Section 25403.1, is not liable, with respect to that
14 release only, pursuant to any of the following:

15 (A) Division 7 (commencing with Section 13000) of the Water
16 Code.

17 (B) Chapter 6.5 (commencing with Section 25100), Chapter 6.7
18 (commencing with Section 25280), Chapter 6.75 (commencing
19 with Section 25299.10), or Chapter 6.8 (commencing with Section
20 25300), of Division 20.

21 (C) Any other state or local law imposing liability for ~~removal~~
22 ~~or remedial actions to~~ *cleanup of* releases of hazardous ~~substances~~
23 ~~materials~~.

24 (2) If the ~~removal or remedial action~~ *cleanup* was also performed
25 pursuant to Chapter 6.65 (commencing with Section 25260) of
26 Division 20, and a certificate of completion is issued pursuant to
27 subdivision (b) of Section 25264, the immunity from local agency
28 action provided by the certificate of completion, as specified in
29 subdivision (c) of Section 25264, shall apply to the local agency,
30 in addition to the immunity conferred by this section.

31 (3) In the case of a ~~removal or remedial action~~ *cleanup*
32 performed pursuant to Chapter 6.65 (commencing with Section
33 25260) of Division 20, and for which the administering agency is
34 a local agency, the limitations on the certificate of completion set
35 forth in paragraphs (1) to (6), inclusive, of subdivision (c) of
36 Section 25264 are limits on any immunity provided for by this
37 section and subdivision (c) of Section 25264.

38 (b) Notwithstanding any provision of law or policy providing
39 for certification by a person conducting a ~~removal or remedial~~
40 ~~action~~ *cleanup* that the action has been properly completed, a

1 determination that a ~~removal or remedial action~~ *cleanup* has been
2 properly completed pursuant to this section shall be made only
3 upon the affirmative approval of the director, the regional board,
4 or the designated agency, as appropriate. The department or
5 regional board, as appropriate, shall, within 60 days of the date it
6 finds that a ~~removal or remedial action~~ *cleanup* has been
7 completed, notify the local agency in writing that the immunity
8 provided by this section is in effect. If another agency is designated
9 to oversee the ~~removal or remedial action~~ *cleanup* pursuant to
10 paragraph (1) or (2) of subdivision (d) of Section 25403.1, the
11 designated agency shall issue a notice within 60 days of the date
12 it finds that a ~~removal or remedial action~~ *cleanup* has been
13 completed.

14 (c) Upon proper completion of a ~~removal or remedial action~~,
15 *cleanup*, as specified in subdivision (b), the immunity from action
16 provided by the certificate of completion provided pursuant to
17 subdivision (c) of Section 25264 and the immunity provided by
18 this section extends to all of the following, but only for the release
19 or releases specifically identified in the approved ~~cleanup or~~
20 ~~removal or remedial action~~ plan and not for any subsequent release
21 or any release not specifically identified in the approved cleanup
22 plan ~~or removal or remedial action~~ plan:

23 (1) An employee or agent of the local agency, including an
24 instrumentality of the local agency authorized to exercise some,
25 or all, of the powers of a local agency within, or for the benefit of,
26 a local agency and an employee or agent of the instrumentality.

27 (2) A person that enters into an agreement with a local agency
28 for the development of property, if the agreement requires the
29 person to acquire property affected by a hazardous ~~substance~~
30 *material* release or to ~~remove or remedy~~ *clean up* a hazardous
31 ~~substance~~ *material* release with respect to that property.

32 (3) A person that acquires the property after a person has entered
33 into an agreement with a local agency for development of the
34 property, as described in paragraph (2).

35 (4) A person that provides financing to a person specified in
36 paragraph (2) or (3).

37 (d) Notwithstanding any other law, the immunity provided by
38 this section does not extend to any of the following:

1 (1) A person that was a responsible party for the release before
2 entering into an agreement, acquiring property, or providing
3 financing, as specified in subdivision (c).

4 (2) A person specified in subdivision (a) or (c) for any
5 subsequent release of a hazardous ~~substance~~ *material* or any release
6 of a hazardous ~~substance~~ *material* not specifically identified in the
7 approved cleanup ~~plan or removal or remedial action~~ plan.

8 (3) A contractor who prepares the cleanup ~~plan or removal or~~
9 ~~remedial action plan~~, *plan* or conducts the ~~removal or remedial~~
10 ~~action~~ *cleanup*.

11 (4) A person that obtains an approval of a cleanup plan ~~or~~
12 ~~removal or remedial action plan~~ pursuant to Section 25403.1, or
13 *pursuant to* a finding, as specified in subdivision (b), by fraud,
14 negligent or intentional nondisclosure, or misrepresentation, and
15 a person that knows before the approval or determination is
16 obtained or before the person enters into an agreement, acquires
17 the ~~property~~ *property*, or provides financing, as specified in
18 subdivision (c), that the approval or determination was obtained
19 by these means.

20 (e) The immunity provided by this section is in addition to any
21 other immunity provided by law to a local agency.

22 (f) This section does not impair any cause of action by a local
23 agency or any other party against the person responsible for the
24 hazardous ~~substance~~ *material* release that is the subject of the
25 ~~removal or remedial action~~ *cleanup* taken by the local agency or
26 other person immune from liability pursuant to this section.

27 (g) This section does not apply to, or limit, alter, or restrict, an
28 action for personal injury or wrongful death.

29 (h) This section does not limit liability of a person described in
30 paragraph (3) or (4) of subdivision (d) for damages under the
31 federal Comprehensive Environmental Response, Compensation,
32 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et
33 seq.).

34 (i) This section does not establish, limit, or affect the liability
35 of a local agency for a release of a hazardous ~~substance~~ *material*
36 that is not investigated or ~~remediated~~ *cleaned up* pursuant to this
37 section or Chapter 6.65 (commencing with Section 25260).

38 25403.3. The immunity provided for by Section 25403.2 is
39 only conferred if both of the following apply:

1 (a) The action is in accordance with a cleanup plan ~~or removal~~
2 ~~or remedial action plan~~ prepared by a qualified independent
3 contractor and approved by the department, a regional board, or
4 the designated agency, as appropriate, pursuant to Section 25403.1.

5 (b) The ~~removal or remedial action~~ *cleanup* is found to have
6 been undertaken and properly completed, as specified in
7 subdivision (b) of Section 25403.2.

8 ~~25403.4. The local agency shall reimburse the department or~~
9 ~~the regional board for costs incurred in reviewing or~~
10 ~~approving cleanup or removal or remedial action plans pursuant to~~
11 ~~this chapter.~~

12 *25403.4. Within 60 days of being presented with appropriate*
13 *documentation, the local agency shall reimburse the department*
14 *or the regional board for costs incurred in reviewing or approving*
15 *investigation plans and cleanup plans pursuant to this chapter.*
16 *The department or regional board may develop a payment plan*
17 *with the local agency to repay costs over a longer period of time.*
18 *In the event of any dispute over the costs, the local agency shall*
19 *pay any undisputed costs and meet and confer with the department*
20 *or regional board to resolve the disputed items. In connection with*
21 *any disputes not resolved through meet and confer efforts, the*
22 *local agency may utilize any review processes maintained by the*
23 *department or the regional board.*

24 25403.5. (a) Except as otherwise provided in this chapter, if
25 a local agency undertakes action to investigate ~~or characterize~~
26 ~~property, or to remedy or remove, property or clean up,~~ or to
27 require others to ~~remedy or remove, investigate or clean up,~~
28 including compelling a responsible party through a civil injunctive
29 action, ~~to remedy or remove a release of hazardous substance,~~
30 *material*, the responsible party shall be liable to the local agency
31 for the costs incurred in the action. A local agency may not recover
32 the costs of goods and services that were not procured in
33 accordance with procurement procedures, where applicable. The
34 amount of the costs shall include the interest on the costs accrued
35 from the date of expenditure and reasonable attorney's fees and
36 shall be recoverable in a civil action. Interest shall be calculated
37 based on the average annual rate of return on a local agency's
38 investment of surplus funds for the fiscal year in which costs were
39 incurred.

1 (b) The only defenses available to a responsible party shall be
2 the defenses specified in subdivision (b) of Section 25323.5.

3 (c) A local agency may recover any costs incurred to develop
4 and to implement a cleanup plan ~~or removal or remedial action~~
5 ~~plan~~ approved pursuant to this chapter, to the same extent the
6 department is authorized to recover those costs. The scope and
7 standard of liability for cost recovery pursuant to this section shall
8 be the scope and standard of liability under the federal
9 Comprehensive Environmental Response, Compensation, and
10 Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.)
11 as that act would apply to the department. However, any reference
12 to hazardous substance in that act shall be deemed to refer to
13 hazardous ~~substance~~ *material* as defined in Section 25403. *It is*
14 *the intent of the Legislature that local agencies diligently pursue*
15 *reimbursement for investigation and cleanup costs incurred*
16 *pursuant to this chapter, but each local agency is authorized to*
17 *assess whether and to what extent cost recovery is practicable.*

18 (d) An action for recovery of the costs of a ~~remedy or removal~~
19 *cleanup* undertaken by a local agency under this section shall be
20 commenced within three years after completion of the ~~remedy or~~
21 ~~removal~~ *cleanup*.

22 (e) The action to recover costs provided by this section is in
23 addition to, and is not to be construed as restricting, any other
24 cause of action available to a local agency.

25 25403.6. (a) Except as provided in Section 25403.4,
26 notwithstanding any other state law or policy, a local agency that
27 undertakes and completes a ~~removal or remedial action~~, *cleanup*,
28 or otherwise causes a ~~removal or remedial action~~ *cleanup* to be
29 undertaken and completed pursuant to this chapter shall not be
30 liable based on its ownership of property after a release occurred,
31 for any costs that any responsible party for that release incurs to
32 investigate or ~~remediate~~ *clean up* the release or to compensate
33 others for the effects of that release.

34 (b) Except as provided in Section 25403. 2, this article does not
35 limit the powers of the state board or a regional board to enforce
36 Division 7 (commencing with Section 13000) of the Water Code.

37 25403.7. A local agency shall comply with all the following
38 requirements with regard to providing public participation when
39 taking action pursuant to this chapter:

1 (a) The local agency shall provide an opportunity, when
2 preparing the ~~removal or remedial action plan or~~ cleanup plan, for
3 the public and for other public agencies to participate in decisions
4 regarding the ~~removal or remedial action~~, *cleanup plan*, taking
5 into consideration the nature of the community interest.

6 (b) Thirty days before submitting the ~~removal or remedial action~~
7 ~~plan or~~ cleanup plan for approval, the local agency shall take all
8 of the following actions:

9 (1) Notify all other appropriate public agencies, including, but
10 not limited to, the department or the regional board, if not required
11 to approve the plan, regarding the proposed ~~removal or remedial~~
12 ~~action plan or~~ cleanup plan.

13 (2) Place a notice in a newspaper of general circulation in the
14 area of the property, including, but not limited to, a
15 community-based newspaper, as appropriate.

16 (3) Post notice of the proposed ~~removal or remedial action plan~~
17 ~~or~~ cleanup plan on the property.

18 (c) All of the following methods for public participation shall
19 be used to notify the public of the proposed ~~removal or remedial~~
20 ~~action plan or~~ cleanup plan:

21 (1) Thirty days' prior public notice in a factsheet format of the
22 proposed ~~removal or remedial action plan or~~ cleanup plan, in
23 English and in any other language commonly spoken in the area
24 of the property.

25 (2) Access, at both the local agency and at local repositories, to
26 the proposed ~~removal or remedial action plan or~~ cleanup plan,
27 property assessment, addenda, and any other supporting
28 documentation, including materials listed as references in the
29 ~~removal or remedial action plan or~~ cleanup plan and property
30 assessment.

31 (3) Procedures for providing a reasonable opportunity to
32 comment on the plan and related documents specified in paragraph
33 (2).

34 (d) If a public meeting is requested, the local agency shall hold
35 a public meeting in the area of the property to receive comments.

36 (e) The local agency shall consider any comments received
37 before submitting the proposed ~~removal or remedial action plan~~
38 ~~or~~ cleanup plan for approval.

39 (f) The local agency may also provide for, but is not limited to,
40 the use of other methods for public participation, including public

1 notices, direct notification of interested parties, distribution of
2 electronic copies of the ~~removal or remedial action plan or~~ cleanup
3 plan, property assessment addenda, and other supporting
4 documentation, including materials listed as references in the
5 ~~removal or remedial action plan or~~ cleanup plan and property
6 assessment, electronic comment forms, and forming advisory
7 groups, as appropriate, to disseminate information and assist the
8 local agency in gathering public input, holding additional public
9 meetings or public hearings, and providing an opportunity to
10 comment on the proposed ~~removal or remedial action plan or~~
11 cleanup plan prior to approval.

12 (g) The local agency, as part of its communications with affected
13 communities, shall provide information regarding the process by
14 which decisions about the property are made and the recourse that
15 is available for those who may disagree with an agency decision.

16 (h) The local agency shall consider the issue of environmental
17 justice, as defined in subdivision (e) of Section 65040.12 of the
18 Government Code, for communities most impacted, including
19 low-income and racial minority populations, before submitting the
20 ~~removal or remedial action plan or~~ cleanup plan for approval.

21 (i) To the extent possible, the local agency shall coordinate its
22 public participation activities with those undertaken by other
23 jurisdictions and agencies associated with the property, to avoid
24 duplication.

25 (j) It is the intent of the Legislature that the public participation
26 process established pursuant to this section ensures full and robust
27 participation of a community affected by this chapter.

28 25403.8. The Legislature finds and declares that this chapter
29 is the policy successor to the Polanco Redevelopment Act (Article
30 12.5 (commencing with Section 33459) of Part 1 of Chapter 4 of
31 Division 24) and shall be interpreted and implemented consistent
32 with that act. It is further the intent of the Legislature that any
33 judicial construction or interpretation of the Polanco
34 Redevelopment Act also apply to this chapter.